

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
REYES E. OLIVAS**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD75388

DATE: May 27, 2014

Appeal From:

Cass County Circuit Court
The Honorable Jacqueline A. Cook, Judge

Appellate Judges:

Division Two: Victor C. Howard, Presiding Judge, Alok Ahuja, Judge and Gary D. Witt, Judge

Attorneys:

Evan J. Buchheim, Jefferson City, MO, for respondent.

Amy M. Bartholow, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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STATE OF MISSOURI,

RESPONDENT,

v.

REYES E. OLIVAS,

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No. WD75388

Cass County

Before Division Two: Victor C. Howard, Presiding Judge, Alok Ahuja, Judge and Gary D. Witt, Judge

Appellant Reyes Esteban Olivas ("Olivas") appeals his convictions for first-degree murder and armed criminal action, for which he was given consecutive sentences of life imprisonment without the possibility of parole and life imprisonment, respectively. Olivas, who was age sixteen at the time he committed the offenses, was tried to a jury but waived jury sentencing. On appeal, Olivas challenges the sufficiency of the evidence to prove deliberation in order to convict him for the first-degree murder charge and raises a constitutional challenge to section 565.020.2 which mandates that the sentence for a juvenile defendant be life without eligibility for probation or parole.

AFFIRMED IN PART AND REMANDED FOR RE-SENTENCING.

Division Two holds:

(1) Evidence of multiple stab wounds, repeated blows, the failure to seek medical help, an ample opportunity to stop the attack and that Olivas left the room and returned with a butcher knife during the attack all support an inference of deliberation. The jury had ample evidence before it that Olivas acted deliberately, consciously and not reflexively. Additionally, when Olivas found the victim trying to walk, he drug her back to the bedroom and sat her up so "that she could bleed out and die faster." Based on the facts and the law, there was ample and sufficient evidence before the jury that Olivas deliberated before killing the victim.

(2) The constitutional challenge is meritorious in light of *State v. Hart*, 404 S.W.3d 232 (Mo. banc 2013) and other recent decisions in Eighth Amendment jurisprudence which has evolved to forbid a sentencing scheme that mandates life without parole for juvenile offenders when the sentencing entity has not expressly considered whether a sentence of life without parole is just and appropriate in light of defendant's age and the other circumstances surrounding his offense. Therefore the matter is remanded for resentencing.

Opinion by Gary D. Witt, Judge

May 27, 2014

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